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Secretary for
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Protection

California Regional Water Quality Control Board

Los Angeles Region

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Mr. C.E. Mabury
P.O. Box 72
6485 Grimes Canyon Road
Moorpark, California 93021

CONDITIONAL CERTIFICATION FOR PROPOSED RIVERBED BERM RECLAMATION, RESTORATION AND MAINTENANCE PROJECT (Corps' Project No. 2004-00055-AJS), SANTA CLARA RIVER, FILLMORE, VENTURA COUNTY (File No. 03-145)

Dear Mr. Mabury:

Regional Board staff has reviewed your request (the Applicant) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on November 20, 2003.

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

The Applicant shall be liable civilly for any violations of this certification in accordance with the California Water Code. This certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this certification action, please contact Ms. Parvaneh Khayat, Section 401 Program, at (213) 576-5733.

_____[Original signed by]_____
Dennis A. Dickerson
Executive Officer

_____[December 18, 2003]_____
Date

California Environmental Protection Agency



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DISTRIBUTION LIST

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ATTACHMENT A

Project Information File No. 03-145

1. Applicant: Mr. C.E. Mabury
P.O. Box 72
6485 Grimes Canyon Road
Moorpark, California 93021

Phone: (805) 523-8515
2. Applicant's Agent: NONE
3. Project Name: Riverbed Berm Reclamation, Restoration and Maintenance
4. Project Location: Fillmore, Ventura County
Township 4N Range 19W Section 31
5. Type of Project: Riverbed berm reclamation and reconstruction
6. Project Description: *Purpose:*

To reclaim, restore, stabilize and maintain the eroded berm along the south side of the Santa Clara Riverbed.

Description:

The project area (streambed) is approximately 800 feet-long and varies between 25 to 40 feet wide. The proposed restored berm will be connected to the existing berm upstream on the same property. A diversion channel will be created away from the work area as directed by the project biologist. The water diversion channel will be opened in coordination with an ecologist who will remove any fish in the stream before and after the opening of the diversion. The fish will be relocated to a suitable habitat upstream or downstream from the project. The length of the diversion will be approximately 600 feet. Sediment from the riverbed will be used for the construction of the proposed berm. Approximately 86,000 cubic feet of sediment will be used. There will be no removal of sediment from the site location.

A trench 5 feet deep will be constructed from the foot of the proposed restored bank, fabric will be embedded into the trench and orange trees (dead) will be compacted into the trench area, the area will be filled with the excavated river soils and recompacted. The newly restored bank will be covered with fabric, seeded with native

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seed mix and planted with willow trees. The restored bank will be irrigated to ensure growth. Maintenance of the streambank will be ongoing.

7. Federal Agency/Permit: U.S. Army Corps of Engineers
NWP No. (Permit No. 2004-00055-AJS)

The ACOE issued an exemption from permit requirements under Section 404 of the Clean Water Act for the proposed project on November 5, 2003.
8. Other Required Regulatory Approvals: California Department of Fish and Game
Streambed Alteration Agreement (Notification No. 2003-5097-R5)
9. California Environmental Quality Act (CEQA) Compliance: The California Department of Fish and Game approved the project's Notice of Exemption on October 23, 2003 pursuant to the CEQA Guidelines, Section 15302 (Replacement or Reconstruction).
10. Receiving Water: Santa Clara River (Hydrologic Unit No. 405.31)
11. Designated Beneficial Uses: IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, WARM, WILD, RARE, MIGR, WET
12. Impacted Waters of the United States: Non-wetland waters (vegetated streambed): 0.6 temporary acres
13. Dredge Volume: 0 cubic yards
14. Related Projects Implemented/to be Implemented by the Applicant: The Applicant has not identified any related projects carried out in the last 5 years or planned for implementation in the next 5 years.
15. Avoidance/Minimization Activities: The Applicant has proposed to implement several Best Management Practices, including, but not limited to, the following:
 - Staging/storage areas for equipment and materials shall be located outside of the stream;
 - All equipment and vehicles shall be clean and free of weed seeds, leaks, or other foreign materials and checked daily;

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- One vehicle will be used to enter wet portion of the stream to create the diversion channel;
- One ramp will be constructed in the footprint of the project for ingress and egress. The ramp will be removed upon the completion of the project; and
- All litter and pollution laws will be adhered to; equipment maintenance shall be done away from streambed to avoid any chance of petroleum products or other pollutants from the equipment entering the flow.

16. Proposed
Compensatory
Mitigation:

The Applicant has proposed to restore 0.6 acres of riparian habitat (1:1 ratio) onsite.

17. Required
Compensatory
Mitigation:

See Attachment B Conditions of Certifications, Additional Conditions for modifications and additions to the above proposed compensatory mitigation.

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Conditions of Certification File No. 03-145

STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR Subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' Section 404 Permit and the California Department of Fish and Game's Streambed Alteration Agreement. **These documents shall be submitted prior to any discharge to waters of the state.**
2. The Applicant and all contractors employed by the Applicant shall have copies of this certification, the approved maintenance plan, and all other regulatory approvals for this project on site at all times so they are familiar with all conditions set forth.
3. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the state. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the state.

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4. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the state.
5. The Applicant shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This Certification does not authorize the discharge by the applicant for any other activity than specifically described in the 404 Permit.
6. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses.
7. The Applicant shall allow the Regional Board and its authorized representative entry to the premises, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Certification, or as otherwise authorized by the California Water Code.
8. The Applicant shall not conduct any construction activities within waters of the state during a rainfall event. The Applicant shall maintain a **five-day (5-day) clear weather forecast** before conducting any operations within waters of the state.
9. The Applicant shall utilize the services of a qualified biologist with expertise in riparian assessments during all construction activities where clearing involves areas to be partially cleared (i.e. some vegetation is to remain in the same reach or in an adjacent reach). The biologist shall be available on site during construction activities to ensure that all protected areas are marked properly and ensure that no vegetation outside the specified areas is removed. The biologist shall have the authority to stop the work, as necessary, if instructions are not followed. The biologist shall be available upon request from this Regional Board for consultation within 24 hours of request of consultation.
10. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum **5-foot** buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste. Sufficient time should be allowed to obtain any such permits (generally 180 days). If groundwater is encountered without the benefit of appropriate permits, the

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Applicant shall cease all activities in the areas where groundwater is present, file a Report of Waste Discharge to this Regional Board, and obtain any necessary permits prior to discharging waste.

11. All project activities not included in this certification, and which may require a permit, must be reported to the Regional Board for appropriate permitting. Bank stabilization and grading, as well as any other ground disturbances, are subject to restoration and revegetation requirements, and may require additional certification action.
12. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan** to this Regional Board. The plan shall include the proposed method and duration of diversion activities, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for pH, temperature, dissolved oxygen, turbidity, and total suspended solids shall be implemented. These constituents shall be monitored on a **daily** basis during the first week of diversion activities, and then on a **weekly** basis, thereafter, until the in-stream work is complete. Results of the analyses shall be submitted to this Regional Board by the **15th** day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.
13. The Applicant shall restore the proposed **0.06 acres** of TEMPORARY IMPACTS to waters of the United States and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the state. Restoration shall include grading of disturbed areas to pre-project contours and revegetation with native species to the extent feasible. The Applicant shall implement all necessary Best Management Practices to control erosion and runoff from areas associated with this project.
14. The Applicant shall provide COMPENSATORY MITIGATION to offset the proposed temporal loss of **0.60 acres** waters of the United States by creating or restoring riparian habitat at a minimum 1:1 area replacement ratio (0.60 acres). As an alternative, the Applicant may provide adequate funding to a third party organization for the creation or restoration of a total of 0.60 acres of riparian habitat within waters of the United States/Federal jurisdictional wetlands. The mitigation site shall be located within the Santa Clara River Watershed to the extent feasible unless otherwise approved by this Regional Board. The boundary of the mitigation site shall be clearly identified on a map of suitable

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- quality and shall be defined by latitude and longitude. This information shall be submitted to this Regional Board for approval prior to any disturbance within waters of the United States and shall include copies of any agreements made between the Applicant and a third party organization regarding compensatory mitigation efforts.
15. All open space and mitigation areas shall be placed within a conservation easement to ensure preservation in perpetuity. Documentation of proper easement placement shall be submitted to the Regional Board within one year.
 16. The Applicant shall submit Geographical Positioning System (GPS) coordinates in decimal-degrees format outlining the boundary of the project and mitigation areas. Additionally, the Applicant shall submit a site description, including dimensions of project and mitigation areas, and pre and post- project photographs.
 17. The project proponent shall submit an **Annual Report** by **January 1st each year**. The report shall describe in detail all of the project activities actually performed. This report shall include as a minimum, the following documentation:
 - (a) Color aerial and representative cross-section photo documentation of the pre- and post-project conditions organized in an easy to interpret format;
 - (b) The overall status of project including a detailed schedule of work;
 - (c) Copies of all permits revised as required in Additional Condition 1;
 - (d) A certified statement from the permittee or his/her representative that all conditions of this certification have been met.
 18. The Applicant shall submit to this Regional Board **Annual Mitigation Monitoring Reports** by **January 1st** of each year documenting all restoration and mitigation efforts, including, percent survival by plant species and percent cover. The reports shall include discussion of any monitoring activities and exotic plant control efforts. Representative pre and post photographs from designated stations shall be included in the reports. The reports shall be submitted by **January 1st** of each year for a minimum period of **five (5) years** after planting or until mitigation success has been achieved.
 19. All applications, reports, or information submitted to the Regional Board shall be signed:
 - (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates;

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- (b) For a partnership, by a general partner;
 - (c) For a sole proprietorship, by the proprietor;
 - (d) For a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee; and
 - (e) A certified statement from the permittee or his/her representative that all conditions of this certification have been met shall be submitted once their project has been completed.
20. Each and any report submitted in accordance with this Certification shall contain the following completed declaration:

“I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed they system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Executed on the _____ day of _____ at _____.

(Signature)
(Title)”

21. The Applicant shall submit a copy of their Best Management Practices Manual to this Regional Board **prior to any discharge into waters of the United States.**
22. All communications regarding this project and submitted to this Regional Board shall identify the Project File Number **03-145**. Submittals shall be sent to the attention of the Nonpoint Source Unit.
23. The Applicant shall have copies of this certification and all other regulatory approvals on site at all times, and all contractors employed by the Applicant shall be made aware of the conditions of this certification.
24. Any modifications of the proposed project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application and appropriate filing fee.

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25. The project shall comply with the local regulations associated with the Regional Board's **Municipal Stormwater Permit** issued to Ventura County and co-permittees under NPDES No. CAS004002 and Waste Discharge Requirements Order No. 00-108. This includes the Stormwater Quality Urban Impact Mitigation Plan (SQUIMP) and all related implementing local ordinances and regulations for the control of stormwater pollution from new development and redevelopment. The project shall also comply with all requirements of the National Pollutant Discharge Elimination System (NPDES) **General Permit** for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ. All stormwater treatment systems shall be located outside of any water of the State and shall not be used as a wetland or riparian mitigation credit.
26. Coverage under this Certification may be transferred to the extent the underlying federal permit may legally be transferred and further provided that the Applicant notifies the Executive Officer at least 30 days before the proposed transfer date, and the notice includes a written agreement between the existing and new Applicants containing a specific date of coverage, responsibility for compliance with this Certification, and liability between them.
27. The Applicant or their agents shall report any noncompliance, which may endanger health or the environment. Any such information shall be provided verbally to the Executive Officer within 24 hours from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
28. *Enforcement:*
 - (a) In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
 - (b) In response to a suspected violation of any condition of this certification, the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB

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deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

- (c) In response to any violation of the conditions of this certification, the SWRCB or RWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance.
29. This certification shall expire **five (5) years** from the date of signature. The Applicant may request a renewal of this certification 180 days prior to its termination if the project as described has not been completed. Renewals may be granted in **five-year (5-year)** increments, are subject to additional filing fees, and will require Regional Board approval. If the Applicant fails to request a renewal prior to the certification's expiration, then the Applicant shall submit a new application and appropriate filing fees.